Bee-Keeping Not a Nuisance.

[So Decided by the Supreme Court.]

History of the Lawsuit entitled Z. A. Clark vs. the City of Arkadelphia, Arkansas, and defended by the "National Bee-Keepers' Union."

In May, 1887, the Arkadelphia City Council, Ark., passed an Ordinance, which, with its preamble, ran thus:

Whereas, a petition from many citizens of Arkadelphia, having been previously presented to this Council, setting forth that the raising of bees or keeping them in the City of Arkadelphia, was injurious and destructive to property, such as early fruit, and dangerous to citizens when riding in vehicles or on horseback upon the streets, and a pest in many of the houses in said city, having stung many persons, and especially children, while walking the streets and sidewalks.

The ordinance as adopted read thus:

"Be it ordained by the Council of the City of Arkadelphia, That it shall be unlawful for any person or persons to own, keep or raise bees in the City of Arkadelphia, the same having been declared a nuisance.

"That any person or persons keeping or owning bees in the City of Arkadelphia are hereby notified to remove the same from the corporate limits of the City of Arkadelphia within thirty days from date hereof."

SECTION 2 provides a penalty of not less than $5.00 or more than $25.00 for a violation of the ordinance.

The cause for this action was the fact that Z. A. Clark, who has kept bees in that city, was not in political harmony with those in power, and the latter sought to punish him and get rid of his presence, by prohibiting the keepng of bees within the corporate limits of the city.

Z. A. Clark was ordered to remove his bees by June 6, 1887. He did not remove them; and on January 2, 1888, he was arrested; and fined, day after day, for ten successive days, for maintaining a *nuisance*, by keeping his bees in the suburbs of that city. Not paying the fines, Z. A. Clark was committed to the city jail, by order of the Mayor. Being a member of the "National Bee-Keepers' Union," he very naturally appealed to it for protection and being clearly in the right, the "Union" engaged Major J. L. Witherspoon, ex-Attorney-General of Arkansas, and several others, to defend this suit.

The National Bee-Keepers' Union carried the case to the Circuit Court, for it would be detrimental to the pursuit to allow an ordinance against bee-keeping to remain uncontested, to be quoted as a precedent against the keeping of bees, because it had been declared "a nuisance" by a City Council in Arkansas.

By the enforcement of that unlawful ordinance of the city, Z. A. Clark was deprived of his liberty and the constitutional rights guaranteed to every citizen in the United States.

Even granting that it was wrong in Z. A. Clark not to obey the city authorities, he should have had a speedy trial by an *impartial jury*—all of which had been denied him. Even when released under a writ of *habeas corpus*, he was, within three hours, re-arrested and fined.

After demanding a change of venue, because of the prejudice of the Mayor, that functionary again fined him, denying him his constitutional rights.

In the Circuit Court.

The Circuit Court convened in July, 1888, and the Hon. Sam. W. Williams, of Little Rock, was added to the attorneys for the Union. Our attorneys, Judges S. W. Williams, Witherspoon, Murray and McMillan, made a motion to dismiss the case against Z. A. Clark, because the ordinance of the city of Arkadelphia, on which the prosecution was founded, is void and in violation of law.

Then Judge S. W. Williams read section after section of law, in Z. A. Clark's favor, showing that a man's right to hold property is paramount to all Legislative power; and any attempt to take away such right is unconstitutional.

After which, Judge Hearn stated that he had lived a long time in Arkadelphia, and that bees had been kept there all the time, and that he had not heard any complaint until this case came up. He added that the case would go to the Supreme Court, no matter in which way it was decided in his Court, and he wanted to be found on the right side when decided in the Supreme Court.

He then sustained the motion of the attorneys for the Union, to dismiss the case, and he declared the ordinance of the city "*illegal and void!*" The city attorney gave notice of appeal to the Supreme Court, which was heard on June 22, 1889.

In the Supreme Court.

Messrs. Crawford & Crawford, attorneys for the city, argued in favor of the validity of the ordinance. Their argument may be summed up thus:

In Huckenstein's Appeal, 70 Penn., St., 102, s. c., 10, Am. Rept, 669, *supra*, it was said, "If a man lives in town, of necessity he must submit to the consequences of the obligations of trades, which may be carried on in his immediate neighborhood, which are *actually necessary* for trade and commerce, also for the enjoyment of the inhabitants of the town." However convenient for Appellee to own, keep and raise bees in the City of Arkadelphia, it cannot be contended that the business is at all necessary for trade and commerce, the enjoyment of property, or for the benefit of the inhabitants of the city. His business can be carried on just as successfully at a distance from the city, without interfering with the comfort and convenience of its inhabitants.

Bill Nye, in a recent communication to the press, tells of a Mr. Joseph Lininger, near Huntington, Ind., who has established there a "Skunk ranch," and is doing a very profitable business in that line. Should he conclude to move his ranch into the City of Arkadelphia, he could object to having his business declared a nuisance, with as much show of right, as the Appellee maintains.

"There is no common right to do that, which, by a valid law, or ordinance, is prohibited; and courts will not declare an authorized ordinance void because it prohibits what otherwise might lawfully be done."

It was contended that this ordinance is invalid, because, instead of regulating the keeping of bees, it prohibited the business altogether. We can see how the City could regulate the keeping of goats, dogs, hogs and cows, but it would be impossible to pass an ordinance allowing bees to be kept within the corporation, and at the same time regulate the business so as to prevent them from flying abroad. You cannot build a wall high enough to keep the bee from ranging. Suppose an ordinance should be passed, allowing the owning, keeping and raising of bees in the city, but prohibiting any one, under the penalty of a fine, from allowing his bees to fly in the streets, or trespass upon other people's premises. Such an ordinance, with the condition annexed, would deprive Appellee of the claimed right, and would be a kind of Legislative juggling that would

"Keep the word of promise to the ear,
And break it to the hope."

The ordinance in this case would not have been a whit better if it had allowed every citizen to keep one or more hives of bees. If one hive would not be a nuisance, how many would be? Where is the line to be drawn? We contend that the City Council ought to be, and is, the only proper judge, and its action will be final, unless it has clearly exceeded its authority in the passage of the ordinance.

The argument of Judge S. W. Williams, one of the attorneys for the "National Bee-Keepers' Union," is here given in full, because of its very great importance and value for reference.

ARGUMENT OF JUDGE WILLIAMS.

This case discloses a most flagrant violation of the property rights of the citizen. It seems that Clark, who lived in the outskirts of Arkadelphia, a village of some two thousand inhabitants, scattered over territory enough for one hundred thousand—*a ruse in urbe*—had a few bees, as the record shows (page 1), 35 stands. This gave rise to a persecution unparalleled since the days of the boot and the thumb screw, to force Clark to give up his property.

Those running the city at the time, not content to make a test case, and have the question settled by this Court—after passing this sweeping ordinance, commenced a system of daily arrests, trials without jury, judgments and imprisonments, resulting in appeals; and this is one of a numerous spawn of cases from the same oppressive hot-bed.

At last Clark was compelled, at a great loss, to give up his property, and quit his business of bee-raising and honey-production in Arkadelphia—a principal source of his support—as an alternative to indefinite imprisonment.

When the case came to the Circuit Court, one test case was tried, upon motion to dismiss, and the Court below held the ordinance void, because it did more than regulate the keeping of property—it forbade the owning, or keeping a valuable and useful property in the town; in effect holding that the bee was *per se*, a nuisance. For if it was not, then its presence in a town could not be prohibited by any law.

Before proceeding to argue the case we call attention to the statement of Counsel, at page 9 of their Brief, that it is a matter of common knowledge that they are liable to sting children, etc. It is not a matter of common knowledge, because it is not true; unless children molest them at their hives, or catch them. But because a domestic insect may sting or hurt under some circumstances, no more makes it a nuisance—*per se*—and liable to prohibition, than the fact that a horse may kick, may run away in harness and kill a child; or an ox may gore persons with its horns, would make these animals nuisances *per se*.

I venture the assertion that there is not a town or city in the United States where bees are not kept. I know they are now kept in Little Rock, and have ever been. My nearest neighbors have them. I have kept them in my yard while rearing a family of children, and I cannot recall any instance of an injury from bees. I speak this in the line of common knowledge, which the Court must recognize.

I can recall the kick of a pony, and a cow running over a child—shall keeping of horses and cows be forbidden by ordinance? And while bees have been kept for centuries in towns, it is an argument in their favor that Arkadelphia is the first on record to forbid them. I respectfully submit that while the Court must judicially know the habits of all animals, the "little busy bee" should have a chance with the cow, the horse, the sportive dog, the gentle, purring cat, and even the festive chicken cock—on a par with counsel's skunk-farm story—a pure fiction of Bill Nye.

I may be allowed to refer to the fact that last year two instances are given in newspapers, one authentic at Hot Springs, one elsewhere, not so well established—where children were killed by a chicken cock attacking them. For this reason can the keeping of chickens be forbidden? The bee has no such record of homicidal or infanticidal results. Will these instances, or the fighting of mother-hens over their broods, make chickens *per se* nuisances? Unless bees, under all circumstances, however kept and tended, and in any quantities however small are *per se* nuisances—this ordinance cannot be sustained; for it does not regulate the quantity, or manner of keeping, or make the keeper responsible, as in case of other dangerous animals, and punishable for consequences, but assumes to destroy property in them in Arkadelphia altogether, or compel a man to leave his home and buy another, or quit his business.

The provisions of Sections 751 to 764, Mansfield, does not give the city of Arkadelphia power to take a man's property for public use, without compensation, under the power to prevent injury or annoyance. Section 751

invests them with no such *quia timet* jurisdiction.

Because bees may sting or annoy, therefore we prohibit. It would follow, that because cows may gore, dogs annoy the sensitive by barking or biting, or running mad, we will also prohibit them. Because vehicles may annoy, by raising dust, or making a noise, or animals may run away in harness, therefore we prohibit them. No such autocratic or despotic power is necessary to preserve the citizen from real harm and annoyance; and the Legislature could not prohibit the keeping of bees, and could not delegate such power under the Bill of Rights. For the right to acquire, possess, and protect property is secured by Section 2, Article 2, of the Constitution, beyond Legislative and municipal control: and bees are the subject of property. Nor can the citizen be destroyed or deprived of his life, liberty or property, except by the judgment of his peers, and the law of the land.

ib. Section 21. Nor shall property be taken or damaged for public use without just compensation. *ib.* Section 22. This property-right is also protected by the 14th Amendment to the United States Constitution. Stockton laundry case, 26 Federal Rep. 611. The last cited is a case in point. The general law regulating governments of cities, does not give every town council, when, in their judgment, they fear that the keeping of certain kinds of property may annoy or injure, to declare it an annoyance and prohibit it. It must be a nuisance, *per se*, like a mill-pond or slaughter-house. Many things annoy, and may injure, that are not nuisances, and cannot be prohibited. Bell ringing, vehicle running, steam-whistles, and railroad trains are often annoying; so are privies and stables. This would not give power to prohibit them, to prevent *quia timet*—the possibility of annoyance or injury. The viciousness of this ordinance will be manifest, if we keep in view the difference between the power to regulate and keep possession of property, in due bounds, which power is conceded—and the power to prohibit keeping property altogether.

These general clauses of the statute granting powers to towns are to be strictly construed, and this Court has repeatedly held ordinances void, which have been passed under a liberal construction of the general powers given The first is Waters *vs.* Leech, 3 Arkansas, 114. Thus the right to regulate and license keeping of a dram-shop does not authorize them to prohibit. Tuck *vs.* Waldron, 31 Arkansas, 462. Saloam S. Springs *vs.* Thompson, 41 Arkansas, 456. Nor did the power to suppress gaming-houses empower a city to license them. State *vs.* Lindsey, 34 Arkansas; Goetler *vs.* State Use, etc., 45 Arkansas, 454—and the power given in the act did not give power to declare that which is not a nuisance *per se*, to be one—which was attempted. Little Rock *vs.* Ward, 41 Arkansas, 527. Even the Legislature cannot, by declaration, make anything what it is not. 3 S. W. Rep. 425. 12 Western Rep. 760. 11 Central Reporter, 219.

We may sum up this result: The power to regulate does not give the power to prohibit, though it does give power to license. Russellville *vs.* White, 41 Arkansas, 485; and that the power to prevent and abate nuisance, does not give power to declare that a nuisance which is not *per se* such; and no presumptions are indulged, in favor of the rightfulness of an ordinance. A City Council, with full power to declare a nuisance does so at its peril. Americus *vs.* Mitchell, 5 S. E. Reporter, 201. Persons abating a nuisance under a State law must show its existence. Newark & South Horse-Car Co. *vs.* Hunt, 11 Central Reporter 219,

In keeping with the decisions of our own court, to the effect that a City Council cannot by ordinance make that a nuisance which is not such; see the following authorities: Horr & Bemiss, Mun. Pol. Ord. Sec. 252. 24 M. J. Eq. 169.

There is a recent case decided by the Supreme Court of Michigan, in which a city attempted by ordinance, under penalty of one hundred dollars, to punish and prohibit the distribution of hand-bills and cards on any street or alley. The ordinance was held void, and that it was not a proper exercise of the power to clean streets, etc., and to prevent the incumbering of the same, and to regulate the manner in which the streets should be used, and to prohibit and prevent the flying of kites, and all practices, amusements, and doings therein having a tendency to frighten teams or horses, as dangerous to life or property. This was held void in case of People *vs.* Armstrong, by the Supreme Court of Michigan, Jan. 18, 1889, and is reported and commented on in the *Albany Law Journal*, March 9, 1889, with approval.

In that case there was much more pretense for the power than there is in this case; for bees are not named—

and the power is claimed here under the general power to prevent injury or annoyance, etc. Mansfield's Digest, Sec. 751.

An ordinance of Grand Rapids, which forbade the marching, parading, riding, or driving upon public streets with musical instruments, banners, flags, torches, flambeaux, or while singing or shouting, without the Mayor's permission, was void, as prohibiting a thing lawful in itself, and leaving it to an unregulated official discretion. See Frazee's case, 63 Michigan, 396.

All ordinances arbitrary in their terms, and unreasonable, and unnecessarily abridging private rights, are void. 1 Dillon Municipal Corporation, Sec. 253, Clinton *vs.* Phillips, 58 Illinois, 102. Kip *vs.* Patterson, 26 N. J. Law 298. Commissioner *vs.* Gas Co., 12, Penn. St. 318. Commonwealth, *vs.* Robertson, 5 Cush. 438.

This ordinance not only does not come within the power granted, but it is also *unreasonable and unwarranted;* either is sufficient to make it void. Lynn *vs.* Freemason Building Association, 9 Central Reporter, 360.

Municipalities only have such powers as are expressly granted to them, or such as are necessary to carry those powers into effect. United States *vs.* Ludlow, 9 Central Reporter, 517. Johnson *vs.* District of Columbia, 9 Central Reporter, 653. It is well settled that the general power to prevent annoyance does not give power to declare everything which may annoy or arouse the fears of the sensitive—a nuisance. Nor does the existence of that fact give power to prohibit. See authorities above cited.

It is equally well settled that a city cannot under general power, declare that a nuisance which is not so in fact. Des Plaines *vs.* Poyer, 12 Western Reporter, 760. Stockton Laundry Case, 26 Federal Reporter, 611—where it is held that an ordinance is unconstitutional and void which forbid a laundry in the heart of the city; yet a drying up of stinking soap-suds might become dangerous to health, and annoy, and infected clothing would be more frequent than bee-stings. See also 9 Pacific Reporter, 141.

Mr. Wood, in his work on Nuisance, in the index at page 1021, refers to bees with a reference to title—Dangerous Animals. Under that head, at page 1025, he refers to cases of animals which, by their owners, may be known to injure, referring to page 871 *et seq.*, which recognizes fully the right to keep animals subject to responsibility (*on scienter*) for injuries by those known to be of vicious character.

Strangely enough, of all the cases cited, not an instance of injury by "the little busy bee," or the silkworm is found; showing how harmless these little insects really are. The habits of the bee lead it to wood, field, and orchard, for pasture, and if it enters a house it is because carelessness has left some sweet uncovered, and exposed, to attract it, and rarely then does it enter a house. Those who thus invite it, are guilty of contributory negligence, and have no right to complain.

I am employed in this case by the National Bee-Keepers' Union and this is probably, about the only known case in America or England, where a town has attempted to prohibit bee-culture; and this is a test case to determine the extent of their powers. The burden of showing the nuisance is on the city. Bailey's *onus probandi*, 233, *ib.* page 460.

A city ordinance cannot be leveled at a mere private nuisance to one or more persons. The nuisance must be public and general in its character, and must be an actual nuisance. Horr & Bemiss. Sec. 252, 254. 4 Blackstone's Commentaries, 167. 1 Bishop Crim. Law, Sec. 243. Wood on Nuisance, pages 24, 25, 26, 80, 81, 82. Dillon on Municipal Corporation, Sec. 308.

I undertake to say from a knowledge of the habits of the bee, that it would be impossible for it to become more than a private nuisance, for which the person injured has his remedy, as in case of injury from a vicious animal. The nuisance must not only be public and actual, but substantial. "It is not a mere trifling annoyance with which the law deals in public nuisances," but "real, substantial, injuries, that are calculated to offend the sense of men of simple tastes and habits." Conveniences are not balanced. Wood on "Nuisance," page 81.

Even in those acts which are admittedly nuisances, an ordinance is void and unreasonable, where it trenches on private rights and property without corresponding public necessity. Thus, while slaughter-houses may be regulated, an ordinance is void which prohibits one from killing an animal on his own premises, unless in a slaughter house—an attempt to drive everybody to one

slaughter house. Treford *vs.* People. 14 Michigan, 41. Cannot compel removal of a steam engine from a city not *per se* a nuisance. Baltimore *vs.* Palecke, 49 Md. 217. 33 American, 239. Nor can a city require the owner of a theater to pay a police officer for attendance at every performance. Waters *vs.* Leech, 3 Ark. 110. In the last cited case Judge Dickinson, delivering the opinion of this Court, says: "The corporate powers are not only limited, but must be reasonably exercised in sound discretion, and not only strictly within the limits of the Charter, but in perfect subordination to the Constitution, and the general laws of land, and the rights dependent thereon."

In short, I refer the Court to Horr and Bemiss on municipal police ordinance, Sec. 131, for a full review of this point.

Where the instances are given wherein unreasonable ordinances and those in violation of private rights are given, the ordinances must accord with the Federal Constitution and laws, and with the Legislation of the State.

It is misleading to follow English decisions, because in that country municipal power rests often upon proscription, a source not recognized here. Horr & Bemis, Sec. 123.

We do not dispute that if there was express power given to enact an ordinance of a certain kind, if constitutional, the discretion or propriety of enacting it, is left to the judgment of the Council, and its decision is final. Horr & Bemiss, Sec. 128. But here is no "express power" given by law to forbid bees; but merely a general power to prevent "annoyance," "injury," etc. Whether an ordinance is within the terms of the power, and is reasonable, the *courts must* determine, and *have* determined in this State, and elsewhere, again and again.

So much for the contention of counsel—that the action of the City Council was final; invoking a correct principle applied to a wrong state of facts. I say to them, show your express power to prohibit keeping bees, or any other animal, or insect, for fear somebody may get hurt, and I will surrender the case, and even waive the constitutional question. There is no such express power given; that is the full extent to which the decisions go. If a power is expressly given by the Legislature, within the Constitution, the decision of the Council, that the power should be exercised by ordinance, is final. Yet this is invoked to bolster up this sweeping *anti-bee ordinance;* about as much akin to the question as a Choctaw Treaty to a Psalm of David.

You cannot stable bees like a horse, but the Court must judicially know to do that, would destroy their value as property, and the Court will judicially know that unless the owners of houses, groceries, etc., are careless in leaving attractions for them, they will not annoy them; and if they do so attract them by carelessness, they cannot complain. The bee, even with these attractions, prefers to pasture among forests, fields, and amidst flowers; so much so, that its habits are crystallized in song, and made subject of poetic simile.

If the people of Arkadelphia will keep the sugar and molasses barrels closed, and the grocers will keep their premises clean, no bee of Clark's will visit them; and from the well-known habits of the housewives of Arkadelphia—in perfect order and cleanliness, having no superiors—no bee visits a private house there; and hurting young fruit and the like, as suggested in the ordinance, raises a suspicion that here is a pretext, and behind the ordinance is a concealed motive. Was it that Clark was making too much out of honey and bees? or was he competing too sharply with somebody?

The power given cities must harmonize with constitutional property rights, and must be reasonable and lawful, and not contravene common right. Dillon on Mun. Corp. Sec. 258, 259. And "wherever an ordinance seeks to alter a well-settled and fundamental principle of the common law," or to establish a rule interfering with the rights of individuals, or the public, the power to do so must come from plain Legislative enactment." Taylor *vs.* Griswold, 2 Green, N. J., 222. Dillon on Municipal Corp. Sec. 55 and Note.

I have already shown that by no possibility can the power be derived from the powers contained in Mansfield's Digest, Sec. 751; which is nothing but a power to punish or abate a public nuisance, and while the named and defined powers are very full, we look in vain for any power or authority to abate or remove bees, as such; nor would it be constitutional if there was such a statute. It is only when bees by the place or manner of keeping, or the like, become a public nuisance, and to that extent, and no further, does the general power go.

Dillon on Mun. Corp. Sec. 261. Horr & Bemis, Sec. 252, last paragrph. Emmett *vs.* Council Bluffs, 46 Iowa, 66. Pye *vs.* Peterson, 45 Texas, 312. State *vs.* Matt, 61 Md., 292. Davis *vs.* Clifton, 8 N. C. C. P., 236. Horr & Bemiss, Sec. 144.

The power cannot be given in general terms to abate that which comes under the general definition of a nuisance, in advance of a judicial determination. Dillon on Mun. Cor. Sec. 308; and in Gates *vs.* Milwaukee, 10 Wallace, 497. Judge Miller says: "This would place every house, every business, and all the property in the city at the uncontrolled will of the temporary local authority. So the words "injury" and "annoyance," used in Sec. 751, Mans. Dig. have been too often defined in like Charters to need further explanation here. It simply gives a power over nuisances, and does not mean any injury or any annoyance that sensitive or timid or nervous people may imagine or fear.

The bees must be *per se* a nuisance to justify this sweeping ordinance, under which, according to its letter, a man cannot live in Arkadelphia, if he owns bees, no difference where he keeps them; for personal property, wherever kept, is in law with the owner. In Harvey *vs.* Dewoody, 18 Arkansas, 252; where the Mayor and other town officers were sued in trespass for tearing down an old house which the owner had permitted to remain vacant and open, and to be used as a privy, until it became unhealthful and dangerous, an ordinance was passed to abate it. To a plea setting up the ordinance and facts on which it was based as a defense, on demurrer to this plea, it was held a good defense.

The counsel for Arkadelphia try to gather comfort from this case, but it would be parallel if the Des Arc Council had passed an ordinance requiring all wooden houses to be torn down, without regard to condition or occupancy, or compensation to the owner. We would then have a case like the sweeping ordinance prohibiting bees, and requiring their removal for public good, without compensation. Would a plea setting up an ordinance requiring all wooden buildings to be destroyed, have protected the officers in the Dewoody case?

I shall not attempt to follow the learned counsel, or review their authorities: as far as they have any bearing on the case, they sustain my position: 1. That the power is not given to prohibit bees by the statute. 2. That bees must at the time and place, and under all circumstances, be a nuisance, *per se*, or the ordinance violates property right, and is not sustained by law.

I have not stopped to criticise the manner in which the ordinance is brought in the record. It is the basis of the action, and by law must be filed, at least in the Circuit Court, for the Court cannot take judicial notice of it. It must be read at the trial, and brought on the record as the basis of the suit. Abbott's Trial Evidence, page 770. Mans. Digest, Sec. 2,835.

I suppose, as no point is made in argument upon the motion of Appellant to dismiss the appeal, that it was thought to be unnecessary to argue it. Cardon's testimony was taken upon that motion, to prove merely that an appeal was in fact prayed, and to make him amend his transcript, and the Court overruled the motion to dismiss the appeal.

Appeals from Mayor's Courts regulated by Mansfield, Sec. 2,432, 2,425, 2,436, required nothing but a bond: Perrin *ex parte*, 41 Ark., 194, the jurisdiction of Justice of the Peace: appeal from Mayor taken in the same manner as from Justice. Mansfield, Sec. 797. This is a *quasi criminal* proceeding; if so, the appeal was rightly perfected. But if governed by civil code, then it is not to be dismissed for informality. Mansfield, 4,141 mode of appeal in civil case, 4,134, 4,135; and it was amendable. But all that was required was the filing of the bond, as the proceeding was criminal.

It is desired that the Court pass upon the question, however, for the profession are in great doubt as to what is meant by appeal from Mayor, as in case of Justice of Peace, as provided in Sec. 797. In view of the fact that there are two modes of appealing from a Justice—one by above Sections 2,432, 2,436, in criminal cases; the other in civil cases, by Sections 4,134, 4,135, (Mansfield,) which differs from the mode of appeal in criminal cases. I submit that when the Mayor sits in a misdemeanor case, whether for violating an ordinance, or a law, the appeal must follow criminal procedure. If he sits as a Justice of the Peace in a civil case, the appeal must be taken according to Sections 4,134, 4,135,

Decision of the Supreme Court of Arkansas—June 22, 1889.

127 (Crim.) City of Arkadelphia *vs.* Z. A. Clark.

The Appellee, Clark, was convicted in the Mayor's Court of Arkadelphia for a violation of the city ordinance. The ordinance under which the prosecution was had, provided that it shall be unlawful for any person or persons to own, keep or raise bees in the City of Arkadelphia, the same having been declared a nuisance. Upon an appeal to the Circuit Court, that Court sustained a demurrer filed by the defendant, and dismissed the prosecution.

HELD.—Neither the keeping, owning or raising of bees is in itself a nuisance. Bees may become a nuisance in a city, but whether they are so or not, is a question to be judicially determined in each case.

The ordinance under consideration undertakes to make each of the acts named a nuisance, without regard to the fact whether it is so or not, or whether bees in general have become a nuisance in the city. It is therefore too broad, and invalid.

Affirmed.

The decision of the Supreme Court is a document that will become of great use as a *precedent*. It will be a guide for the rulings of Judges—for the information of Juries—and for the regulation of those who may dare to interfere with a respectable pursuit, by law or otherwise!

Thomas G. Newman.

General Manager National Bee-Keepers' Union.

Issued by the National Bee-Keepers' Union. Copies may be obtained free by addressing the General Manager, THOMAS G. NEWMAN, 147 South Western Avenue, Chicago, Ills.